IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL REVISION APPLICATION NO.842 OF 1998
IN
SUMMONS FOR JUDGMENT NO.54 OF 1998
IN
SUMMARY SUIT NO.3184 OF 1996

R. N. Kedia ..Petitioner.
Vs.
Dr. Yagnik Allied Industries Pvt. Ltd. ..Respondent.
...
Mr. S.K. Chaurasia h/f Mr. A.M. Saraogi for the Petitioner.
None for the Respondent.
...

CORAM : DR.D.Y.CHANDRACHUD, J.

14th November, 2005.

P.C. :

1. In a summary suit filed under Order 37 of the Code of Civil Procedure, 1908 the Learned Trial Judge in the City Civil Court made the Summons for Judgment absolute by ordering and decreeing the Petitioner to pay a sum of Rs.19,972/- along with interest on Rs.13,196/- at the rate of 24% per annum from the date of filing of the suit till payment or realization. The suit under Order 37 of the Code of Civil Procedure was filed in respect of dues outstanding on account of goods sold, supplied and

delivered. The case of the Respondent- Plaintiff is that the Respondent supplied to the Petitioner goods of a total value of Rs.33,196.80 under invoices dated 28th March, 1993 and 5th April, 1993. It has been stated that the Defendant agreed to pay interest at the rate of 24% per annum if the payment is not made by the due date. A part payment of Rs.20,000/- was made by cheque on 18th January, 1994 leaving a balance of Rs.13,196.80. The Defendant issued a 'C" form on 5th April, 1993 in respect of the invoice dated 5th April, 1993. The contract in writing is according to the Respondent evidenced by the acceptance of the invoices, signing of the delivery challans and the issuance of the 'C' form. A notice of demand dated 17th November, 1995 was addressed to the Defendant to which there was no reply.

2. An affidavit was filed in reply to the Summons for Judgment in the Trial Court. The only defence that is raised in paragraph 4 thereof is that the suit is not maintainable as a summary suit, since none of the documents on the basis of which the suit is filed falls within the purview of Order 37. It has been submitted that the suit

is filed for goods sold and delivered under alleged invoices and is based on monies due at the foot of the account as prevailing between the parties, and the authenticity of which can be verified only by leading evidence at the trial. This is the only defence which has been set out. In these circumstances, the Learned Trial Judge was justified in holding that the defence is entirely sham. The Petitioner has not denied the factum of delivery of goods, the signing of delivery challans, invoices, the making of part payments and the issuance of form 'C'. There is absolutely no defence to the claim in the suit. None of the factual averments in the Plaint including on the liability to pay interest have been controverted. In the circumstances, the judgment and order of the Learned Trial Judge does not warrant any interference. The Civil Revision Application is accordingly dismissed.